United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

TABLE OF CONTENTS

PAGE

Preliminary Statement 1

Statement of Facts 2

ARGUMENT:

POINT I—The trial judge erred in restricting cross-examination of the key government witness 5

A—The Appellant 6

B—The Key Government Witness 7

C—The Cross-examination of Christos was unduly restricted regarding his past dealings in narcotics 10

POINT II—The interest and bias of the key witness precluded from trial 16

CONCLUSION 18

TABLE OF CASES

Beaudine v. *United States*, 368 F.2d 417, 424 (5th Cir. 1966) 13

District of Columbia v. *Clawans*, 300 U.S. 617, 632 (1936) 10

Fakas v. *United States*, 2 F.2d 644, 647 (5th Cir. 1924) 17

United States v. *Ferrara*, 451 F.2d 91, 97 (2d Cir. 1971) 15

United States v. *Irwin*, 354 F.2d 192, 198 (2d Cir. 1965) 15

PAGE

United States v. *Kahn*, 366 F.2d 259, 265 (2d Cir. 1966) 15

United States v. *Newman*, 476 F.2d 733, 737 (3d Cir. 1973) 17

United States v. *Owens*, 263 F.2d 720, 722 (2d Cir. 1959) 13

United States v. *Varelli*, 407 F.2d 735, 751 (7th Cir. 1969) 10

United States v. *Whiting*, 317 F.2d 191, 196 (4th Cir. 1962) 12

STATUTES CITED

Title 18, United States Code:
Section 2 1

Title 21, United States Code:
Section 841(a)(1) 1

OTHER AUTHORITIES

Wigmore, Evidence, Section 981 at 547 (3rd Ed. 1940) 11

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1685

UNITED STATES OF AMERICA,

Appellee,

—v.—

JOSEPH CHARLES MANGER,

Defendant-Appellant.

BRIEF ON BEHALF OF APPELLANT JOSEPH CHARLES MANGER

Preliminary Statement

Indictment 72 Cr. 716 was filed in the Eastern District of New York on June 20, 1972. Joseph Charles Manger, the appellant, and Spiros P. Christos were charged in three counts with the distribution and possession of approximately 9,360 tablets containing amphetamine sulfate (Count 1), approximately 14,040 of the same tablets (Count 2), and approximately 28.98 grams of cocaine hydrochloride (Count 3), all in violation of Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2.

Two additional counts charging Manger with other violations were dismissed prior to trial. Christos entered a plea of guilty to Count 3 prior to trial and was the key government witness (T. 98).

---

* References preceded by "T" refer to transcript of the trial.

Manger was tried before the Honorable Mark A. Costantino, and a jury, during March 11, 12, 13 and 14, 1974, resulting in his conviction on the three counts.

On May 10, 1974 the trial judge imposed a sentence of imprisonment for five (5) years, and two years special parole, and a concurrent sentence on the remaining counts.

Statement of Facts

The indictment relates to the distribution of drugs on May 17, 1972 in and around a house located in Queens. There is not any dispute concerning what occurred outside of the house on that date, but there is a serious dispute as to what transpired inside the house involving the obtaining of the drugs. There were only two witnesses to testify to the details of the drug transaction, one Spiros Christos, the government witness and the other, the appellant. Conviction in this case hinged on the jury's reliance on the testimony of Christos.

The appellant and Christos had known one another on a social basis for a couple of years prior to May 17, 1972. In about December 1970 the appellant and his sister moved into a house which on May 17, 1972 became the focal point for the drug activity alleged in the indictment (T. 181).

The house was located on the northwest corner of Kissena Boulevard and 45th Avenue in Queens. The address was 137-75 45th Avenue, and it was a large white three story house. On the ground floor there was a large living room, a foyer, dining room, on the second floor, five bedrooms, and on the third floor, there were three bedrooms with numerous closets throughout the dwelling (T. 185). There were approximately fifteen rooms altogether, and during the period from December 1970 through

May 17, 1972 it was occupied by many different individuals. The number of permanent residents varied, and the house was frequently made available to friends and guests to stay overnight. There were frequent large parties at the house and there was continued traffic in and out of the dwelling (T. 180, 186). The main government witness, Christos, had been to the house, and he said that he knew various people lived in the house (T. 64, 127). The appellant's sister testified that Christos also slept over in the house, and the appellant testified that about a week prior to May 17, 1972, Christos approached Manger and indicated he was having difficulties with his wife, whereupon Manger gave him a key to the house, and Christos brought in a valise which he left on the premises (T. 190).

Spiros Christos and his wife resided in a four family dwelling in Long Beach, Nassau County (T. 72). He was married in February of 1972 and resided on one floor while below him resided William Puchelt who was a government informant at that time for the Bureau of Narcotics and Dangerous Drugs (T. 35). Puchelt did not testify at the trial but Christos testified that Puchelt approached him about obtaining drugs (T. 113). As will be developed later, Christos, although only twenty-three years of age when he testified at trial, had a long history in the sale and possession of narcotics. During the period from February 1972 through May 17, 1972, Christos and Puchelt met many times and Christos advised him he could obtain the narcotics (T. 113). Puchelt, in turn, advised the Bureau and arrangements were made to surveil Christos when he obtained the narcotics.

Christos admitted on his direct testimony that he was most anxious to complete this sale and make some money for himself, and he testified that he telephoned the appellant on May 16, 1972 and pleaded with Manger to obtain the amphetamine tablets (T. 74). Christos testified that

Manger agreed to do this, and they decided on a sale price of Twenty-five Hundred Dollars with Christos to retain a couple of hundred dollars as his share (T. 75). Manger denied having any such telephone conversation with Christos and denied entering into any such agreement (T. 192).

Arrangements were made between Christos and Puchelt whereby they agreed to drive to the house where Manger resided to pick up the tablets and about an ounce of cocaine. On May 17, 1972 Christos and his wife drove in a Volkswagen to the Manger residence, while Puchelt followed in his Chevrolet. Narcotics agents had been advised by Puchelt of this trip to the house, and they placed it under surveillance. Both cars arrived in a parking lot near the residence, whereupon Christos and his wife entered the house. Puchelt remained in this parking lot under the eye of the surveilling agents. The testimony is in dispute as to what transpired in the residence, with Christos testimony that at this time he obtained about 10,000 amphetamine tablets from Manger, while the latter swore that Christos entered the house, went upstairs, and then departed from the house. In any event, it is agreed Christos left the house, went back to his Volkswagen where he gave Puchelt the tablets, which Puchelt placed in his Chevrolet (T. 36). This transaction represents Count One of the indictment.

After a discussion with Puchelt, Christos then returned to the house. Christos this time obtained about 15,000 tablets and the cocaine, and remained in the house for about ten minutes (T. 46). He returned to his Volkswagen and met with Puchelt. This time Christos did not give the narcotics to Puchelt but, rather, placed the 15,000 in the trunk of the Volkswagen, and kept the cocaine in his jacket (T. 89). Christos testified that while he eventually intended to give these drugs to Puchelt, he was going to take these drugs with him while he made a social visit in

Long Island (T. 134). The possession of these drugs represent Counts Two and Three of the indictment.

At this point, the surveilling agents moved in, arrested Christos, seized the narcotics, and then entered the residence and arrested the appellant, Christors' wife, and another resident. The government agents did not undertake a fingerprint analysis of the three packages of drugs to determine if Manger's prints were on the bags (T. 50).

ARGUMENT

POINT I

The trial judge erred in restricting cross-examination of the key government witness.

The issue in this case was whether the narcotics, which were the subject of the indictment, were in the possession of the appellant. The government'e case consisted of the testimony of Spiro Christos who testified as to what he alleged went on in the house during May 17, 1972. The rest of the government's case consisted of the surveilling agents who did not observe what went on inside of the house while Christos was there. They could only testify as to their surveillance conducted outside of the house which involved the observation of Christos together with Puchelt. The jury could only convict the appellant if they believed the testimony of Christos, and then only if they found this testimony of such a substantial nature that they could convict the defendant without any reasonable doubt as to his guilt. The government relied upon Christos' testimony, and in light of the essential nature of his testimony, it was absolutely necessary the jury have a complete understanding of his background, particularly with regard to his dealing in, and possession of, narcotics.

The defense in this case was that the narcotics in fact belonged to Christos, and that when he entered the house he obtained the drugs and then gave them to Puchelt (T. 141). In support of this defense the appellant testified in this case that he had known Christos since about 1970, and that up to May of 1972 Christos frequently came to the house, attended parties, and, at least on one occasion slept overnight. In May of 1972 the appellant testified that Christos came to him and indicated that he was experiencing some marital difficulties, and requested a key to the premises at 137-75 45th Avenue. Christos needed the key in case it was necessary to separate from his wife, and the appellant testified that at the same time Christos entered the residence with a small valise. It was the defense's contention that Christos placed the drugs in this large house rather than keep them in his own apartment. A foundation for this defense is that Christos had previously pleaded guilty to possession of narcotics in his own apartment, and would not make the same mistake twice but, rather, store any drugs in another location.

A.—The Appellant

Joseps Charles Manger was at the time of his trial testimony thirty-one years of age. He did not have any prior convictions and, in fact, had never been arrested on any charge whatsoever. He had attended Queens College at night, and graduated in 1968. He had spent two years in the army, serving fourteen months in Korea and had received an honorable discharge. He was gainfully employed as an account executive for a women's apparel firm. As noted above, he moved into this house some time in late 1970, together with his sister. He resided in the house along with many other people up until his arrest on May 17, 1972 (T. 179, 184).

B—The Key Government Witness

Spiros Christos, at the time of trial was twenty-three years of age. He had a long history of dealing in narcotics, and had been arrested on a number of occasions, and convicted on at least two occasions. His arrest and conviction record consisted of the following:

(1) Prior to August 1970, he was arrested for the criminal possession of narcotic material. This possession related to brass pipes which were used in smoking narcotics (T. 102-3). The trial judge ruled that if a matter was simply an arrest, defense counsel can not go into it (T. 101).

(2) On August 6, 1970 he was arrested for possession of dangerous drugs (T. 102). This involved an arrest in Loudonville, New York. There was a hearing held outside of the presence of the jury as to whether or not this matter could be the subject of cross-examination of the witness Christos. The appellant's theory was that any factual matter involving the witness' pre-disposition to possession of drugs, or any material involved in the use of drugs, was relevant to the issues in this case. The government, on the other hand, argued that all arrests should be excluded from trial, and no cross-examination permitted. The facts surrounding the Loudonville matter showed that in August of 1971 Christos was in an automobile in Loudonville, New York. He was arrested at that time and charged with the possession of dangerous drugs. He had in his possession the type of parts that could make up a hypodermic needle. However, in a hearing outside the presence of the jury, Christos said they were lamp parts (T. 105). Christos also testified he had in his possession a crumpled up "leaf" (T. 105). According to Christos, the "leaf", after chemical analysis, turned out to be negative (T. 105). Christos, according to his further testimony outside the presence of the jury, was permitted to plead guilty to a traffic violation, fined $250.00. The trial

court excluded any reference to these facts ruling that unless defense counsel can show an official disposition of conviction you can not ask the question (T. 106).

(3) An arrest in February 1970, in Hicksville, Long Island (T. 122) charging Christos with the possession of marijuana in his apartment (T. 115). Christos pleaded guilty to the offense in May 1971 (T. 114), and received a sentence of three years probation. Under the terms of probation, he could not engage in any further criminal activity, or he could violate his probation and be placed in jail. During the trial, the trial judge permitted cross-examination on this conviction.

(4) While on probation, and on October 16, 1971 Christos was arrested for the possession of a dangerous weapon (T. 57). It involved the possession of a knife, and on December 13, 1972 he entered a plea of guilty, and on January 31, 1973 he was given a conditional discharge by the court (T. 4). He was not held to be a violator of his probation. Significant about this plea and conviction was the fact that they occurred after the dates of the offenses alleged in this indictment, that is, on May 17, 1972, and while Christos was cooperating with the government. Defense counsel made lengthy argument that the circumstances surrounding this plea and sentence were important to show Christos dealings with various law enforcement officers who may have arranged for a disposition of this nature in exchange for his testimony (T. 56). The trial court did not rule on that argument, but rather was only concerned as to whether it went the truth and veracity of the witness, and it was excluded (T. 59).

(5) Also, while he was on probation the events surrounding this indictment involving May 17, 1972 took place. The facts show that Christos and Puchelt arranged for a sale of narcotics well before Manger ever entered the

picture. Christos was anxious to sell, to obtain a commission from the sale, as well as his further admission that he intended to buy drugs for his own use (T. 133). Christos was indicted in this case along with Manger, and entered a plea of guilty just prior to the commencement of trial. While facing a possible fifteen year jail term, he testified on behalf of the government, and indicated he hoped his testimony would serve to avoid him having to go to jail (T. 121). In fact, it did, since he was sentenced to four years imprisonment, which was suspended, and he was placed on probation. His wife was also arrested on May 17, 1972, and charged with sale of narcotics, but was never indicted in this case (T. 123). While defense counsel was permitted to cross-examine in this area, the preclusion of the matters mentioned above failed to provide the jury with a complete picture of this man's involvement with narcotics.

In fact, while it is clear the main government witness has a long involvement in narcotics, by virtue of the Court's exclusionary rulings, government counsel was able to mislead the jury, based on the record, and argue that Christos was simply a kid of twenty-three, had only one conviction for possession of marijuana, that he was mislead by Manger, and that Christos could not have managed a drug deal of this nature (T. 265-8-9). Admission of all of the relevant facts regarding his background would have precluded such an argument.

Defense counsel attempted to develop these pertinent facts regarding Christos' entire narcotics history. This testimony was not offered to show that Christos had been arrested before and, thus, was a bad person. Rather these facts were attempted to be developed to show that the possession of drugs on May 17, 1972 was, more likely, that of Christos', than the appellant's. The Court, in its rulings took a narrow approach that he would not admit these

matters since they did not bear on the issue of veracity and credibility of the witness. A review of the case law on this issue reveals the error of the trial judge in taking this narrow approach.

C—The Cross-examination of Christos Was Unduly Restricted Regarding His Past Dealings in Narcotics

The Supreme Court of the United States has held:

> "Reasonable restriction of undue cross-examination, and the more rigorous exclusion of questions irrelevant to the substantial issues of the case, and of slight bearing on the bias and credibility of the witnesses are not reversible errors. But the prevention throughout the case, of all inquiry in fields where cross-examination is appropriate, and particularly in circumstances where the excluded questions have a bearing on credibility and on the commission by the accused of the acts relied upon for conviction, passes the proper limits of discretion and is prejudicial error." *District of Columbia* v. *Clawans,* 300 U.S. 617, 632 (1936).

In this trial the issue of whether, and how often, Christos dealt in narcotics was relevant, and the excluded questions had a bearing on both credibility, and whether the accused committed the acts on which he stands convicted.

The rulings of the trial judge limiting cross-examination only to those matters which result in a conviction, and which relate to the veracity of the witness, fails to recognize the right to cross-examine on all relevant areas of misconduct.

In *United States* v. *Varelli,* 407 F.2d 735, 751 (7th Cir. 1969) the Court reversed where the defendant was not

permitted to cross-examine the primary government witness as to other relevant acts of misconduct. The Court held that the cross-examination of the government witness Schang ". . . was unduly restrictive in that inquiry should be allowed regarding Schang's obtaining the testimony of an alibi witness in his trial for bank robbery, in which he pleaded not guilty and was convicted. In essence, the claim is that Schang is either a perjurer or a suborner of perjury. Schang's credibility may be attacked by extrinsic evidence or by cross-examination. The introduction of extrinsic evidence has been limited to prior convictions for various reasons. However, such restriction does not apply to "[T]he extraction of the facts of misconduct from the witness himself upon cross-examination," 3 Wigmore on Evidence, Sec. 981 at 547 (3d Ed. 1940), subject to the exceptions for relevancy and self-incrimination. Since perjury would be relevant to the witness' veracity, cross-examination should be allowed on retrial."

The above cited section of Wigmore provides:

"Section 981. Cross-examination not forbidden. The reasons already examined (Sec. 979 *supra*) appear plainly to have no effect in forbidding the extraction of the facts of misconduct from the witness himself upon cross-examination. (a) There is no danger of confusion of issues, because the matter stops with question and answer; (b) There is no danger of unfair surprise, because the impeached witness is not obliged to be ready with other witnesses to answer the extrinsic testimony of the opponent, for there is none to be answered, and because, so far as the witness himself is concerned, he may not unfairly be expected to be ready to know and to answer as to his own deeds. Thus, neither of the reasons has any application, and hence, so far as they are concerned, the opponent is at liberty to bring out the desired facts by cross-examination and answer of the witness himself to be impeached.

One or two not uncommon inaccuracies in expressing this result, must be noticed:

(1) It is sometimes said that the above objection of confusion of issues is obviated because the witness' answer, if in the negative, "must be taken for true," or "is conclusive in his favor." This is obviously not correct. The jury is not obliged to take any witness' word as true; and they may or may not choose to believe this witness on this point. All that can be said, and all that it means, is that the opponent cannot proceed to prove the alleged fact by extrinsic testimony, and that, if he chooses to ask for testimony on this point from the witness himself, he must accept the chances of the jury believing a negative answer.

(2) It is sometimes said that a witness cannot be contradicted (i.e., shown to be in error) on facts affecting his character, because they are collateral. This is merely a confusion of the present rule forbidding a contradiction on collateral matters (Section 1003 *infra*). This fact of character-conduct, to be sure, happens to be a collateral one, and therefore a contradiction on this point would not be allowable by that rule; but to invoke that rule in the present case, simply confuses separate principles, having a separate purpose and history."

The repeated rulings of the trial court excluding anything that simply was an arrest, or insisting anything admissible must reach the level of a conviction going to the veracity of the witness, completely deprived the appellant of developing relevant acts of misconduct by Christos in the narcotics field.

This rule was followed in *United States* v. *Whiting,* 317 F.2d 191, 196 (4th Cir. 1962) where the Court held a witness may be cross-examined as to past misconduct, without the need for any conviction or arrest, even as to collateral matters in order to impeach his credibility.

The right to a full thorough cross-examination is fundamental to our adversary system of justice and this principle was adhered to in *Beaudine* v. *United States*, 368 F.2d 417, 424 (5th Cir. 1966). In that case the trial judge precluded cross-examination of the key government witness, Mulvay, as to other acts of misconduct, including a demand for money, and the Court in reversing, held ". . . that Mulvay was fair game for pressing rigorous cross-examination in which all of these relevant factors would be subject to penetrating scrutiny . . ." and ". . . the key government witness upon which the government's whole case rested, both legally and persuasively, Mulvay, was not exposed to the truth-revealing pressures of the sort of cross-examination which is really the heart of our adversary system."

The Second Circuit Court of Appeals has examined closely whether an accused was afforded his right to a thorough cross-examination of opposing witnesses on relevant issues. In *United States* v. *Owens*, 263 F.2d 720, 722 (2d Cir. 1959) the Court held that the permissible limits of cross-examination are, for the most part, wisely left to the discretion of the trial judge. The Court ruled the trial judge did not err in foreclosing cross-examination because ". . . the question would appear to open up an irrelevant line of inquiry. . . ." In this instance the trial judge never considered the issue of relevancy, but excluded issues on the ground they did not go to the credibility of Christos.

Turning again to *Owens* the Court refused to reverse the defendant's conviction of sale of heroin on the ground advanced that the trial judge precluded cross-examination of the main government witness, Leroy Sutton, as to whether he had burglarized an establishment. The Court held ". . . defendants in criminal cases are not entitled to conduct unlimited cross-examination of adverse witnesses, and at this point Sutton had already admitted to three convictions, including one for grand larceny, and had also admitted to living by stealing and lying during the period

of his addiction. In challenging this particular trial ruling defendant states in his brief that it is difficult to imagine how the expected affirmative answer to the precluded question could have caused Sutton any additional embarrassment or humiliation. We agree that the testimony already before the jury sufficiently humiliated the Government's main witness, but we also point out that it is difficult to imagine how an admission of burglary could have further impaired Sutton's credibility."

The facts in the instant case differ sharply from *Owens* since we are involved with prior narcotics activity of the main government witness, not an unrelated crime of burglary. Christos, unlike Sutton, had never been seriously embarrassed or humiliated. In fact, in summation, as mentioned above, the assistant United States Attorney was able to portray Christos as a young man, led astray by the older Manger, who had made one prior mistake with the law involving possession of marijuana. The jury never understood the true character and involvement of Christos in the narcotics field. Lastly, these prior acts of misconduct involving brass pipes, hypodermic needles, a crumpled "leaf", and other matters that would have been developed under proper cross-examination, were not offered solely on the issue of credibility. More importantly, they were offered to demonstrate to the jury his involvement in narcotics traffic, and the likelihood Christos, who had ready access to the house, secreted them, and then returned to give some to Puchelt, and retain the remaining fifteen thousand tablets and cocaine for himself, as demonstrated by the fact he was about to leave with these drugs for Long Island when apprehended. His prior conviction for marijuana possession in his own apartment should have made Christos wary of keeping narcotics in his house, and, therefore, if permitted to be developed fully before the jury, the strong probability could have been established that Christos alone, without assistance from Manger, could have had access to these drugs on the premises. But to do this, his predisposi-

tion to possess narcotics, and implements used in connection with narcotics over the last few years, had to be developed.

In *United States* v. *Irwin,* 354 F.2d 192, 198 (2d Cir. 1965) the Court upheld the conviction for bribery because cross-examination into related areas of misconduct was permitted. The Court said ". . . counsel sought to cross-examine Lupesco and other government witnesses on the subject of other instances of bribery, for which they had been indicted, for the purpose of impeaching their credibility. *The trial judge allowed all of the witnesses to testify as to other bribes which they had accepted,* but sustained objections to questions concerning details of criminal acts committed by them which were the subject of pending indictments" (emphasis added). In this instance, the appellant was not afforded this right of delving into other narcotics activity during the cross-examination of Christos. Similarly, in *United States* v. *Ferrara,* 451 F.2d 91, 97 (2d Cir. 1971) the Court did not reverse the conviction of a union official for accepting pay-offs because it found cross-examination sufficient since defense counsel elicited testimony from the key government witness of all the facts ". . . which went to the question of his hostility toward the union and its officers . . .", and did not find prejudicial error by disallowing interrogation regarding specific charges in null and void union proceedings. In the present case Manger was never permitted to show factors involving, if not hostility by Christos, certainly his predisposition to deal in narcotics.

It seems clear that in *United States* v. *Kahn,* 366 F.2d 259, 265 (2d Cir. 1966) the trial judge permitted defense counsel to cross-examine the key government witness Hedges about the commission of various crimes. The Circuit Court held this to be proper, but rejected appellants contention that they should have been allowed ". . . exploration of the details of the crimes on cross-examination. . . ." The Court said the appellants, by virtue of the admissions

of Hedges, had gotten most of the benefit they were going to get out of the crimes, and that Hedges' credibility had been undetermined, while further exploration of the ". . . details of the crimes would have been largely superfluous." This appellant never derived any such benefit because of the foreclosing by the trial court of relevant acts of misconduct.

POINT II

The interest and bias of the key witness precluded from trial.

It is obvious the interest and bias of a witness in testifying should be permitted to be explored fully before the jury. In this instance, the trial judge precluded all testimony concerning the arrest of Christos on October 16, 1971, together with his plea and final disposition of being given a conditional discharge. On October 16, 1971, while on probation from the marijuana conviction, Christos was arrested for possession of a dangerous weapon, a knife. On December 31, 1972 he pleaded guilty, and on January 31, 1973 received a conditional discharge.

It was apparent to defense counsel that some federal, state or local agent may have assisted Christos in avoiding being classed as a violator of probation, and thus, faced with a jail term. Defense counsel desired to explore this conviction on the ground of demonstrating such assistance, which was obviously relevant, if true. The trial judge did not consider this argument, and ruled repeatedly that an arrest for carrying a knife had nothing to do with truth and veracity (T. 56, 57, 59), and refused to permit cross-examination on any phase of this conviction. Thus, the jury never considered the fact that the trial testimony of Christos may have been the result of a promise or inducement by some one in authority to aid him in obtaining a conditional discharge, rather than classification as a violator of probation. The simple denial by the prosecutor of any intervention (T. 58), may well be incorrect, and,

nevertheless, defense counsel should be permitted to develop this issue by cross-examination.

Anything bearing on motivation to testify is relevant and as noted in *Fakas* v. *United States,* 2 F.2d 644, 647 (5th Cir. 1924) the Court held that ". . . bearing upon their credibility, motive for false accusations, as well as bias was vitally relevant, and testimony tending to show such motive was entirely competent. Concededly promises of immunity are admissible; they are, however, rarely made. Inasmuch as the question involved is the motive for testifying falsely and therefore the state of mind of the prosecuting witnesses, the relevant evidence is not alone the acts or attitude of the district attorney but anything else that would throw light upon the prosecuting witnesses' state of mind. It is therefore entirely proper, either by cross-examination of the witness himself, or otherwise, to show a belief or even only a hope on his part that he will secure immunity or a lighter sentence, or any other favorable treatment, in return for his testimony, and that, too, even if it be fully conceded that he had not the slightest basis from any act or word of the district attorney for such a belief or hope. The fact that despite a plea of guilty long since entered, the witness had not yet been sentenced, is proper evidence tending to show the existence of such hope or belief."

See also *United States* v. *Newman,* 476 F.2d 733, 737 (3d Cir. 1973) where the Court upheld the fact that defense counsel has available the right to show the testimony of a government witness was given in reliance on a promise of a lighter sentence, or other preferential treatment. Why, and under what conditions, Christos received the light sentence of conditional discharge following his plea, and while under arrest and indictment on the May 17, 1972, charge, was never permitted to be explored. This factor, taken together with all the other relevant evidence precluded from this trial on behalf of the appellant, constitutes reversible error.

CONCLUSION

For the above reasons, it is respectfully submitted that the conviction of Joseph Charles Manger should be reversed.

Respectfully submitted,

DANIEL P. HOLLMAN
27 East 39th Street
New York, New York 10016
Tel. No.: (212) MU 9-1844
Attorney for Defendant-Appellant
Joseph Charles Manger